

TESTIMONY IN SUPPORT OF SENATE BILLS 171,399,401, 847 and 1037

My name is Francis Drapeau from Leighton, Katz & Drapeau in Rockville, CT. I am Board Certified in Workers' Compensation, and 99% of my practice is representing injured workers before the workers' compensation commission. I am here to testify in support of Senate Bills 171, 399, 401 and 1037, all of which are designed to give the commissioners needed tools in dealing with recalcitrant respondents and Senate Bill 847, which removes the cap on lost earnings benefits under 31-308a.

This is the fairly typical story of a truck driver who for twenty years delivered Drake's cakes and who suffered a knee injury while making a delivery. He had surgery shortly after the injury but never fully recovered. He continued to have treatment on this knee.

This injured worker was never able to return to his truck driving job where he had worked for over twenty years and where he was making over \$1,000.00 per week. In November of 2004, he was awarded scheduled benefits for a 15% permanent impairment to his knee, which equates to 23.25 weeks. He was able to find part-time sedentary work at \$335.00 per week and received 308a wage differential benefits for another 23 weeks. He is still working at this job today, but he has exhausted his wage-differential benefits after only twenty-three weeks.

The cap on these benefits prevents people like this gentleman from entering a retraining program sponsored by the Division of Workers' Rehabilitation because workers rely on 308a benefits to pay their bills during retraining. Currently, a commissioner does not have the discretion to extend these benefits to assure an injured worker that he will have money coming in during re-training. Senate Bill 847 would correct this by returning the discretion to the commissioner.

In January 2005, this gentleman's doctor stated that he needed a total knee replacement as the result of his work injury. He scheduled surgery, but his doctor received a letter from the insurance company indicating that the surgery was denied. The insurance company continued to deny the surgery even though it did not have a medical opinion to support the denial. The carrier insisted that it was going to schedule a respondents' medical exam, but never did.

Finally, at a hearing in May, the commissioner gave the carrier thirty days within which to schedule its medical exam. The commissioner threatened to preclude it from obtaining an exam if it did not schedule the exam within thirty days.

The carrier did not schedule its medical exam within thirty days. In fact, the carrier did not schedule the exam until the day before the formal hearing on July 27th. The exam was scheduled for August 8th. I arrived at the formal hearing on July 27th and objected to the scheduling of this exam as it was outside the thirty-day period. The commissioner allowed the exam, as he did not want to create due process issues.

At this point, the respondents had denied a knee replacement surgery for six months without the benefit of a medical opinion that supported its position.

A new formal hearing was scheduled for 9:00 a.m. on December 19, 2006 and the carrier scheduled the deposition of the respondent's examiner for 7:00 that morning. The commissioner had to wait to get the transcript from the doctor's deposition before a briefing schedule could be ordered.

Because no weekly indemnity benefits are due, the commissioner can only award attorney fees against the carrier and a \$500.00 penalty for delaying the hearing process. The injured worker does not receive any of this money. Senate Bill 171 addresses this problem by allowing the claimant to benefit from a penalty assessed by the commissioner. Senate Bill 1037 allows the commissioner to order a \$5,000.00 fine instead of just \$500.00.

Thank you for your time. I urge you to pass these critical pieces of legislation.

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